

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY MARCHBANKS,

Petitioner,

v.

Case No. 1:06-cv-269
Hon. Gordon J. Quist

KURT JONES,

Respondent.

ORDER

Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

This matter is now before the court on petitioner's objection to the Rule 5 materials submitted by respondent (docket no. 35). Petitioner contends that the Rule 5 materials are incomplete.

Rule 5(c) of the Rules Governing Section 2254 Cases in the United States District Courts, provides in pertinent part as follows:

The respondent must attach to the answer parts of the transcript that the respondent considers relevant. The judge may order that the respondent furnish other parts of existing transcripts or that parts of untranscribed recordings be transcribed and furnished. If a transcript cannot be obtained, the respondent may submit a narrative summary of the evidence.

First, petitioner objects to the Rule 5 materials on the ground that those materials included only select excerpts from testimony given at his first trial, which resulted in a mistrial (i.e., a hung jury) on April 8, 2003. Petitioner does not explain the relevancy of this testimony to the present habeas petition, which arises from his conviction at the second trial on September 26, 2003. Accordingly, the court finds no reason to require a complete transcript of the first trial.

Second, petitioner objects because the Rule 5 materials did not include a transcript

for a discovery motion dated February 28, 2003. That objection is now moot, because respondent has filed a copy of that transcript. *See* docket no. 39.

Accordingly, petitioner's objections are **OVERRULED**.

IT IS SO ORDERED.

Dated: April 23, 2007

/s/ Hugh W. Brenneman, Jr.

Hugh W. Brenneman, Jr.
United States Magistrate Judge